

MF 95-4
Tax Type: MOTOR FUEL TAX
Issue: Off-Highway Usage Exemption

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
)	Docket No. XXXXX
v.)	IBT #XXXXXX
)	
XXXXXX,)	
)	
)	Alfred Walter
Taxpayer)	Administrative Law Judge
)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: No appearance was filed for either of the captioned parties.

SYNOPSIS: This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Tax Liability XXXXX issued by the Department on XXXXX, for violation of the Motor Fuel Tax Law, 35 ILCS 505/1 et seq., by importing special fuel from Indiana to Illinois without a license and without remitting the Motor Fuel Tax to the Illinois Department of Revenue. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Tax Liability and Correction of Returns, showing a total liability due and owing in the amount of \$4,633.75. (Dept. Grp. Ex. #1)

2. The taxpayer did, during the month of November, 1992, import 18,860 gallons of special fuel from Indiana to Illinois. (Dept. Grp. Ex.

#1)

3. This taxpayer was not licensed to import motor fuel into Illinois from any other state during the month of November, 1992.

CONCLUSIONS OF LAW: On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, probative evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that Schmock Oil Corporation is subject to the standard rate of Motor Fuel Tax as imposed by the Illinois Motor Fuel Tax Law must stand as a matter of law. In support thereof, the following conclusions are made:

35 ILCS 505/13 et seq. provides the manner in which Motor Fuel Tax may be refunded when the fuel is used for purposes other than operating a vehicle upon public highways, and what steps are necessary for a motor carrier to qualify for permission to import motor fuel, and "special fuel", from another state into Illinois. This taxpayer provided no probative evidence of complying with the statutes and I am not persuaded that the taxpayer is entitled to any statutory exemption from taxation.

I recommend that Notice of Tax Liability and Assessment No. XXXXX be affirmed and finalized as issued.

Alfred M. Walter
Administrative Law Judge